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DEC 11 1980
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RECORDATION NO. 12546-A Filed 1425

December 11, 1980

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INTERSTATE COMMERCE COMMISSION

DEC 11 1980
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ICC Washington, D. C.

Ms. Agatha L. Mergenovich
Office of the Secretary
Recordation Office
Interstate Commerce Commission
12th Street and Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Rex Railways, Inc., Rex Leasing, Inc.,
Wickes Leasing Corp., and the Chicago
Milwaukee, St. Paul and Pacific
Railroad Company: Thirty-seven (37)
covered hopper cars bearing Road Nos.
MILW 102128-102164, inclusive.

Dear Ms. Mergenovich:

In accordance with the provisions of Section 11303 of the Revised Interstate Commerce Act, 49 U.S.C. § 11303, and Part 1116 of Title 49 of the Code of Federal Regulations, I request, as special counsel for Rex Railways, Inc., that the enclosed document be recorded and filed by the Interstate Commerce Commission.

You will find enclosed herewith an original and two certified copies of the following document:

"Lease of Railroad Equipment," dated as of December 1, 1980, by and between Rex Railways, Inc., as lessee, and Wickes Leasing Corporation, as lessor.

This Lease is intended to effectuate the lease by Rex Railways, Inc., of 37 covered hopper cars from Wickes Leasing Corporation, bearing the following road numbers and markings: MILW 102128-102164, inclusive. Each of the 37 covered hopper cars is a 100-ton, 4650 cubic feet capacity steel covered hopper car conforming to the

Richard W. Bryan
Conrad

Ms. Agatha L. Mergenovich
December 11, 1980
Page two

Manufacturer's General Arrangement Drawing No. 9-11460, dated
September 11, 1980, and Specification No. 403, dated September 1980.

The parties to this Lease of Railroad Equipment are:

Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632
Attention: President

and

Wickes Leasing Corporation
1010 Second Avenue
San Diego, California 92101
Attention: President

Would you please stamp, as filed, and return the enclosed copies
to my office at your earliest convenience?

If you have any questions in this regard, please do not hesitate
to contact me.

Sincerely yours,

JACKSON, CAMPBELL & PARKINSON, P.C.

By: David H. Cox
David H. Cox

DHC/lg

cc: Richard M. Contino, Esquire

RECORDATION NO. 12546-A Filed 1425

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1980

BETWEEN

REX RAILWAYS, INC.,
LESSEE

AND

WICKES LEASING CORPORATION,
LESSOR

Concerning 37 Covered Hopper Cars

Filed and recorded with the Interstate Commerce
Commission pursuant to 49 U.S.C. §11303 on
_____, 1980.

LEASE OF RAILROAD EQUIPMENT, dated as of December 1, 1980 (this "Lease"), between REX RAILWAYS, INC., a New Jersey corporation ("Lessee"), and WICKES LEASING CORPORATION, a Delaware corporation ("Lessor").

WHEREAS Lessor has entered into or proposes to enter into a Purchase Agreement Assignment dated as of the date hereof (the "Purchase Agreement Assignment") between Lessor and Lessee providing for the assignment from Lessee to Lessor of the rights of Lessee to purchase certain equipment described in Schedule 1 hereto (the "Equipment") from the vendor thereof ~~and Lessor's assumption of Lessee's obligation to make payment for the Equipment~~, all as provided in the Purchase Agreement Assignment, which Purchase Agreement Assignment has been or shall be consented and agreed to by the vendor; and

WHEREAS Lessee desires to lease the Equipment from Lessor;

NOW, THEREFORE, in consideration of the premises and of the rental to be paid and the covenants hereinafter mentioned to be kept and performed by Lessee, Lessor hereby leases the Equipment to Lessee upon the following terms and conditions:

§1. DEFINITIONS

1.1 "Unit" and "Units" shall mean, respectively, one and more than one item of the Equipment.

1.2 "Lessor's Cost" shall mean the cost of acquisition and delivery of one or more Units, as context shall require.

§2. NET LEASE

This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, Lessee shall not be entitled to any abatement of rent or other amounts payable by Lessee hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, counterclaims, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor under this Lease or under the Purchase ~~Order~~ ^{Agreement} Assignment; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against Lessee's or any sublessee's use of all or any of the Units, the interference with such use

by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy or reorganization of, or similar proceeding concerning, Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

§3. DELIVERY AND ACCEPTANCE OF EQUIPMENT

Lessor hereby appoints Lessee its agent for inspection and acceptance of the Units. Lessor shall cause the Units to be delivered to Lessee at the point or points within the United States of America at which the Units are to be delivered to Lessor. Upon such delivery of each Unit, Lessee shall cause an employee or agent of Lessee to inspect the same and, if such Unit is found to be acceptable to Lessee, to accept delivery of such Unit and execute and deliver to Lessor a certificate of acceptance (a "Certificate of Acceptance") stating that such Unit has been inspected and accepted on behalf of Lessee and Lessor on the date of such Certificate of Acceptance and is marked in accordance with Section 6 hereof, whereupon, except as provided in the next succeeding sentence hereof, such Unit shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any item other than a Unit shall be null and void and ineffective to subject such Unit to this Lease. Lessee agrees that it will not place any Unit in service prior to the date on which such Unit shall have been delivered to and accepted by Lessee on behalf of Lessor.

§4. RENTALS

4.1 Amount and Date of Payment. Lessee agrees to pay Lessor rent for the Units as follows:

(i) Interim Rent. An interim rent payment with respect to each Unit subject to this Lease is payable on February 1, 1981 (the "Interim Rent Payment Date"). Such payment shall be in an amount equal to the Lessor's Cost of such Unit times 0.038606% times the number of days which shall have elapsed

from and including the date on which such Unit is delivered and accepted hereunder, to, but not including, the Interim Rent Payment Date.

(ii) Monthly Rental Payment. One hundred forty-four (144) monthly rent payments with respect to each Unit subject to this Lease are payable in advance on the first day of each month commencing on February 1, 1981, and concluding on January 1, 1993. The first sixty (60) such payments shall be in an amount equal to 1.025266% of the Lessor's Cost of such Unit. The following eighty-four (84) such payments shall be in an amount equal to 1.253100% of the Lessor's Cost of such Unit.


4.2 Payments on Nonbusiness Days. If any of the rent payment dates referred to in §4.1 above is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day other than a Saturday, Sunday or other day on which banking institutions in Englewood Cliffs, New Jersey or San Diego, California are authorized or obligated to remain closed.

4.3 Instructions for Payments. All payments by Lessee provided for in this Lease, including, but not limited to, the payments provided for in this §4, shall be paid to Lessor at San Diego, California, or such other place as Lessor shall specify in writing, on the date such payment is due, in such coin or currency of the United States of America as at the time of payment shall then be legal tender for the payment of public and private debts.

4.4 Interest on Overdue Payments. Anything to the contrary herein contained notwithstanding, the nonpayment of any amount to be paid by Lessee under this Lease shall result, to the extent legally enforceable, in the obligation on the part of Lessee promptly to pay with respect to such amount for the period during which it was overdue interest at a rate per annum (the "Penalty Rate") equal to 114% of the rate offered by Security Pacific National Bank from time to time to its most substantial corporate customers for commercial loans of 90-day duration or at such lesser rate as may be legally enforceable.

§5. TERM OF LEASE

5.1 Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§11 and 13 hereof, shall terminate on ~~December 31, 1992.~~^{January 1, 1993} The obligations of Lessee hereunder (including, but not limited to, Lessee's obligations under §§4, 7.4, 10, 12, 14 and 18 hereof) shall survive the expiration of the term of this Lease.



§6. IDENTIFICATION MARKS

Lessee, at its own expense, shall cause each Unit to be kept numbered with the road number set forth with respect thereto in Schedule 1 hereto, and shall keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNER-LESSOR WICKES LEASING CORPORATION", with appropriate changes thereof and additions thereto as from time to time may be required to protect Lessor's title to and interest in such Unit and the rights of Lessor under this Lease. Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced or destroyed. Lessee will not change the road number or any Unit unless and until: (i) a statement setting forth the new number to be substituted therefor shall have been filed with Lessor and duly filed, recorded and deposited by Lessee in all public offices where this Lease shall have been filed, recorded and deposited; and (ii) Lessee shall have furnished Lessor an opinion of counsel, satisfactory to Lessor, to such effect and to the further effect that such acts are sufficient for the proper protection, to their satisfaction, of Lessor's title to and interest in the Unit. The Equipment may be lettered with the names or initials or other insignia customarily used by Lessee or any sublessee or their affiliates.

Except as provided in the preceding paragraph, Lessee shall not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§7. WARRANTIES; COMPLIANCE WITH LAWS AND RULES; INDEMNIFICATION

7.1 Warranty of Quiet Enjoyment. Lessor represents and warrants that it has the lawful right to lease the Equipment to Lessee in accordance with the terms hereof and that, so long as no Event of Default (as hereinafter defined) shall have occurred and be continuing, neither Lessor nor any person claiming through Lessor will interfere with Lessee's quiet enjoyment and peaceful possession and use of the Equipment during the term of this Lease.

7.2 Disclaimer of Other Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT DELIVERED TO LESSEE HEREUNDER, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS PRO-

VIDED IN §7.1 HEREOF, it being agreed that, as between Lessor and Lessee, all such risks shall be borne by Lessee; but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of Lessor or Lessee or both, as their interests may appear, at Lessee's sole expense, whatever claims and rights Lessor may have under the Purchase Agreement Assignment; provided, however, that if at any time an Event of Default shall have occurred and be continuing, Lessor may assert and enforce, at Lessee's sole expense, such claims and rights. Lessor shall, except in the case of Lessor's willful acts, have no responsibility or liability to Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Lessor that the Equipment described therein is in all the foregoing respects, satisfactory to Lessee, and Lessee shall not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

7.3 Compliance with Laws and Rules. Lessee shall comply and shall cause any sublessee of any Unit to comply, in all material respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with, to the extent applicable, the laws of the jurisdictions into which operations involving the Equipment extends, the interchange rules of the Association of American Railroads and of any other body having similar authority, and all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment. In the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part of any Unit, Lessee shall comply therewith and shall cause any sublessee of any Unit to so comply. Notwithstanding the foregoing, Lessee or any sublessee of any Unit may at its or their own expense in good faith contest the validity or application of any such law or rule in any manner which does not, in the reasonable opinion of Lessor, adversely affect Lessor's title to or interest in the Equipment or the rights of Lessor under this Lease. Moreover, the requirement that Lessee make any alteration, replacement, addition or modification to the Units which Lessee deems unduly burdensome shall support the conclusion that the Units have become obsolete.

Lessee or any sublessee of any Unit, at its own expense, may make other additions, modifications and improvements (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Lessor's Cost of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit)(collectively "Additions") to any Unit as Lessee or such sublessee may deem desirable in the proper conduct of its or their business so long as such Additions shall not be inconsistent with the continuing operation of the Unit, and shall not diminish the value, utility or condition of the Unit below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of any Unit shall without further act vest in Lessor in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Unit pursuant to the provisions of §8.1 hereof or the terms of the first sentence of this §7.3; or (iii) such Part cannot be readily removed from the Unit without material damage thereto and without diminishing or impairing the value or utility which the Unit had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in Lessee or any such sublessee and may be removed by Lessee or any such sublessee at any time during the term of this Lease or any renewal thereof and prior to the return of the Equipment to Lessor pursuant to §14 hereof. The term "Part" for the purposes of this paragraph shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

7.4 Indemnification. Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort) and demands whatsoever, except such as may arise solely from Lessor's willful acts, and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses,

patent liabilities, penalties and interest, arising out of or resulting from the entering into or the performance of this Lease or the occurrence of an Event of Default, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person. The amount Lessee shall be required to pay with respect to any of its obligations under this section shall include a payment to Lessor sufficient to restore Lessor to the same position, after considering the effect of such payment on its United State Federal income taxes and state and city income taxes or franchise taxes based on net income, that the Lessor would have been in had the liability or expense indemnified against not been incurred.

Lessee shall not be released from its obligations under this §7.4 in the event of any damage to or the destruction or loss of any or all of the Units of Equipment.

Lessee agrees to cooperate with Lessor in the preparation of any and all reports (other than tax returns) to be filed by Lessor with an Federal, state or other regulatory authority by reason of the ownership by Lessor of the Equipment or the leasing thereof to Lessee.

None of the indemnities in this §7.4 shall be deemed to create any rights of subrogation in any insurer or third party against Lessee therefor, from or under the indemnified party, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by Lessee shall not constitute a guarantee by Lessee of the residual value of any Unit.

§8. MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE

8.1 Maintenance. The Equipment shall not be used during the terms of the Lease to haul corrosive materials. Lessee, at its own expense, shall maintain, service, repair and overhaul each Unit (including any parts installed or replacements made to any Unit and considered an Addition), or cause each Unit to be maintained, serviced, repaired and overhauled at all times during the term of this Lease and during any assembling and, if an Event of Default shall have occurred and be continuing, storage period thereafter so that each Unit will remain: (i) in as good operating condition as when delivered (ordinary wear and tear excepted); (ii) in compliance with any and all applicable laws and regulations; and (iii) eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads; provided, however, each Unit shall be maintained at least as well as other similar equipment owned or leased by Lessee.

8.2 Definition of Casualty Occurrence; Payments. In the

event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by the United States Government or by any other governmental entity resulting in loss of possession by Lessee for a period of at least 90 consecutive days during the term hereof (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall promptly and fully notify Lessor with respect thereto. On the rent payment date next succeeding such notice Lessee shall pay Lessor a sum equal to the Casualty Value (as defined in §8.3 hereof) of such Unit as of the date of such payment, plus all rent due and payable prior thereto and remaining unpaid, and other amounts owing to Lessor under this Lease as of such date. Upon the making of such payment by Lessee, rent with respect to the affected Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and Lessor shall transfer whatever title it may have to such Unit to Lessee, without any representation or warranty, expressed or implied, other than a warranty as to the absence of liens arising out of acts of or claims against Lessor.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease but before such Unit shall have been returned in the manner provided in §12 or 14 hereof, Lessee shall promptly and fully notify Lessor with respect thereto and, within thirty (30) days thereof, pay Lessor a sum equal to the Casualty Value of such Unit as of the date of such payment, whereupon Lessor shall transfer whatever title it may have to such Unit to Lessee, without any representation or warranty, express or implied, other than a warranty as to the absence of liens arising out of acts of or claims against Lessor.

8.3 Amount of Casualty Value. The "Casualty Value" of each Unit as of the date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Lessor's Cost of such Unit as is set forth in Schedule 2 hereto opposite such date.

8.4 Requisition for Use. In the event that any Unit shall be requisitioned for use by the United States Government or any other governmental entity (the "Government") during the term hereof and such requisitioning shall not constitute a Casualty Occurrence, Lessee shall promptly and fully notify Lessor with respect thereto and all of Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisitioning had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, Lessee shall be obligated to return such Unit to Lessor pursuant to §14 or, if this Lease shall have been terminated pursuant to §11 hereof, §12 hereof. All payments received by Lessor or Lessee from the Government for the use of such Unit during the term hereof shall be paid over to, or retained by, Lessee provided no Event of Default or event which, with notice or

lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, and all payments received by Lessor or Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, Lessor.

Whenever any Unit shall be requisitioned for use by the Government in a manner not constituting a Casualty Occurrence after the termination of this Lease but before such Unit shall have been returned in the manner provided in §§ 12 or 14 hereof, Lessee shall promptly and fully advise Lessor with respect thereto. If such Unit is returned to Lessee, Lessee shall be obligated to return such Unit to Lessor pursuant to §14 or, if this Lease shall have been terminated pursuant to §11 hereof, §12 hereof. All payments received by Lessor or Lessee from the Government for the use of such Unit shall be paid over to, or retained by, Lessor.

8.5 No Release. Except as provided in this §8, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, a Casualty Occurrence which shall occur after Lessee's acceptance hereunder of the affected Unit.

8.6 Insurance to be Maintained.

(i) Lessee shall cause to be carried and maintained at all times during the term of this Lease and during any assembling and, if an Event of Default shall have occurred and be continuing, storage period thereafter physical damage and liability insurance covering the Equipment in the name of Lessor and Lessee in such amounts and in such form as is commonly maintained on comparable equipment by Lessee and is ^{reasonable} satisfactory to Lessor. Such insurance policy or policies shall provide that all losses thereunder will be adjusted with Lessee and Lessor and will be payable to Lessor and Lessee as their respective interests shall appear;

(ii) The policies of insurance required under this Section 8.6 shall be valid and enforceable policies issued by insurers of recognized responsibility comparable to Lessee's present insurers. Upon the execution of the first Certificate of Acceptance, and thereafter not less than thirty (30) days (if insurance industry practice so allows) prior to the expiration dates of any expiring policies theretofore evidenced under this Section 8.6, Lessee shall deliver to Lessor certificates of insurance evidencing the existence of the policies of insurance required under this §8.6. Such policies may be blanket policies covering other equipment not covered by this Lease, provided that the certificate of insurance evidencing the existence of any such policy shall specifically designate the Units as being covered thereby to the full extent of the amounts herein required and shall name Lessor as an additional insured party thereunder with respect to the

Units. All such policies shall contain an agreement by the insurers that such policies shall not be cancelled without at least thirty (30) days' (if insurance industry practice so allows) prior written notice to Lessor.

§9. REPORTS AND INSPECTION

On or before April 30 in each year, commencing with the calendar year 1982, Lessee will furnish to Lessor an accurate statement: (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units of Equipment then leased hereunder, the amount, description and numbers of all Units of Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as Lessor may reasonably request; (ii) stating that, in the case of all Units of Equipment repainted or repaired during the period covered by such statement, the numbers and markings required by §6 hereof have been preserved or replaced; and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to §8 hereof and stating that such insurance insures the Equipment in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by Lessee in respect of similar equipment owned by it. Lessor, at its sole cost and expense, shall have the right by its agents, to inspect the Equipment and Lessee's records with respect thereto at such reasonable times as Lessor may request during the continuance of this Lease. Lessee shall promptly notify Lessor of any material changes of which Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to §8 hereof.

§10. TAXES

Lessee agrees to pay and discharge (and does hereby agree to indemnify and hold Lessor harmless from and against) all sales, use, personal property, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon, other than such as may arise solely from Lessor's willful acts or negligence) imposed against Lessor, Lessee or the Equipment by any federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Lease (other than any United States federal income tax payable by Lessor measured by net income based on the receipt of payments

provided for herein and other than the aggregate of all state or local taxes measured by net income based on such receipts up to the amount of all state and local taxes measured by net income based on such receipts which would be payable to the state and locality in which Lessor maintains its principal place of business if the Equipment were located in such state and locality, except for any such tax which is in substitution for or relieves Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) unless, and to the extent only that, any such tax, levy, impost, duty, charge or withholding is being contested by Lessee in good faith and by appropriate proceedings which do not adversely affect the property or rights of the Lessor hereunder. In addition, Lessee shall pay on demand the amount of any federal, state and local taxes required to be paid by Lessor in respect of the receipt of amounts referred to in this Section 10. Lessee agrees to file, on behalf of Lessor, all required tax returns and reports concerning the Equipment with all appropriate governmental agencies and to furnish Lessor upon request a copy of each such return or report, including evidence of payment, within thirty (30) days after the due date of such filing. To the extent that any taxes hereinabove referred to in this Section 10 are included in Lessor's Cost for any Unit, Lessee shall not be obligated under this Section 10 for indemnification with respect to such taxes.

§11. DEFAULT

11.1 Events of Default; Remedies. If, during the the term of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein called an "Event of Default") shall occur: (i) a default, and the continuance thereof for five (5) days after written notice thereof from Lessor, in the payment of any amount payable by Lessee hereunder; (ii) an obligation of Lessee or Rex-Noreco, Inc. ("Guarantor") for the payment of borrowed money or rent in excess of \$100,000 becomes or is declared to be due and payable prior to its express maturity by reason of a default by Lessee or Guarantor in the performance or observation of any obligation or condition; (iii) a default in the performance of any of Lessee's agreements herein set forth (and not constituting an Event of Default under either of the preceding clauses of this §11.1) and the continuance thereof for thirty (30) days after written notice thereof from Lessor, specifying such default; (iv) any representation made by Lessee in this Lease or by Guarantor in the Guaranty by Corporate Parent of Lessee, of even date herewith (the "Guaranty"), or contained in any statement, report, schedule, notice or other writing furnished by Lessee or Guarantor to Lessor pursuant to the terms hereof shall be untrue in any material respect on the date made; or (v) Lessee, Guarantor or any subsidiary of either becomes insolvent, fails generally pay its debts as they become due, ceases to conduct its business in its ordinary course, applies for, consents to, or acquiesces in the appointment of, a custodian, receiver, trustee or liquidator for Lessee, Guarantor

or any subsidiary of either or a substantial part of the property of any thereof, or, in the absence of such application, consent or acquiescence, a custodian, receiver, trustee or liquidator is appointed for Lessee or Guarantor or any subsidiary of either or for a substantial part of the property of any thereof, and is not discharged within sixty (60) days; or any bankruptcy, reorganization, debt arrangement or other proceeding under any bankruptcy or insolvency law or any dissolution or liquidation proceeding is instituted by or against Lessee, Guarantor or any subsidiary of either and is consented to or acquiesced in by Lessee, Guarantor or any subsidiary of either and remains undismissed for sixty (60) days.

Upon the occurrence of an Event of Default, Lessor shall (except to the extent otherwise required by law) be entitled to:

(i) Proceed by appropriate court action or actions to enforce performance by Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;

(ii) Repossess any or all Units;

(iii) Elect to sell any or all of the Units, after giving fifteen (15) days' notice to Lessee, at one or more public or private sales and recover from Lessee as liquidated damages for Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of: (1) the aggregate Casualty Value of such Units on the date such notice is given; (2) all rent owing hereunder to and including the rent payment date immediately preceding the date such notice is given; (3) all costs and expenses incurred in searching for, taking, removing, keeping, storing, repairing, restoring, and selling such Units; (4) all other amounts owing by Lessee hereunder, whether as additional rent, indemnification or otherwise; and (5) all costs and expenses, including, without limitation, reasonable legal fees and expenses, incurred by Lessor and as a result of Lessee's default hereunder, exceeds (b) the amount received by Lessor upon such public or private sales of such Units;

(iv) Upon notice to Lessee receive prompt payment from Lessee of an amount equal to the aggregate Casualty Value on the date such notice is given of all Units which have not been sold by Lessor pursuant to clause (iii) above plus, to the extent not otherwise recovered from Lessee pursuant to said clause (iii) above: (1) any rent and other amounts owing hereunder to and including the rent payment date immediately preceding the date such notice is given; (2) all costs and expenses incurred in searching for taking, removing, keeping, storing, repairing and restoring such Units; (3) all other amounts owing

by Lessee hereunder whether as additional rent, indemnification or otherwise; and (4) all costs and expenses, including (without limitation) reasonable legal fees and expenses, incurred by Lessor as a result of Lessee's default hereunder; provided that upon receipt of payment in full of such amount, Lessor shall transfer to Lessee, without any representation or warranty of any kind, express or implied, whatever title to such Units it may have;

(v) By notice to Lessee, declare this Lease terminated without prejudice to Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(vi) Avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity, or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses (iii) and (iv) of this provision shall each include, without limitation, interest at the rate specified in §4.4 hereof on installments of rent owing hereunder and such interest on all other costs, expenses and losses for which Lessor is entitled to payment under said clause.

11.2 Failure to Exercise Rights Not a Waiver. The failure of Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

11.3 Notice of Event of Default. Lessee shall furnish Lessor within 30 days of any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute an Event of Default, and which is continuing on the date by which such written notice is due hereunder, written notice specifying such condition and the nature and status thereof. For the purposes of this §11.3, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of Lessee in this Lease contained, any corporate officer of Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§12. RETURN OF UNITS UPON DEFAULT

12.1 Return of Units. If this Lease shall be terminated pursuant to §11 hereof, Lessor may, upon such further notice, if any, as may be required for compliance with any mandatory

legal requirements then in force and applicable to the action to be taken by Lessor, take or cause to be taken by its agent or agents, immediate possession of one or more of the Units and may remove the same from the possession and use of Lessee or any other person and for such purpose may enter upon the premises of Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall be terminated pursuant to §11 hereof, Lessee shall forthwith deliver possession of the Equipment to Lessor. Each Unit so delivered shall: (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted; and (ii) meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction, as well as all standards then in effect under the interchange rules of the Association of American Railroads, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units of Equipment to Lessor as above required, Lessee shall at its own cost, expense and risk: (a) forthwith, and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units of Equipment have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed, assemble such Units upon such storage tracks of Lessee or any of its affiliates as Lessor reasonably may designate; (b) permit Lessor to store such Equipment on such tracks until the earlier of the sale, leasing or other disposal of such Equipment by Lessor or the passing of three months' time; and (c) transport the same to any place on the lines of railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor.

The assembling, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, store and transport the Equipment. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Equipment after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. If any Unit is not assembled, stored and transported, as hereinabove pro-

vided, within 60 days after such determination, Lessee shall in addition, pay to Lessor for each day after such termination an amount equal to the amount, if any, by which the product of: (i) a fraction the numerator of which is the Penalty Rate and the denominator of which is 360; and (ii) the Casualty Value of such Unit (as of the date 60 days after such termination) for each such day exceeds the actual earnings received by Lessor on such Unit for each such day; such payment shall not affect the obligation of Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

12.2 Lessor Appointed Agent of Lessee. Without in any way limiting the obligation of Lessee under the foregoing provisions of this §12, Lessee hereby irrevocably appoints Lessor as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be in possession of such Unit at the time.

§13. RENEWAL OPTION; RIGHT OF FIRST REFUSAL;
TERMINATION OPTION

13.1 Renewal Option. Provided no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing at the end of the original term hereof, Lessee shall have the option to renew this Lease, with respect to all, but not less than all, of the Units then subject hereto, for an additional term of three (3) years. If Lessee desires to exercise such option, it shall give Lessor written notice of its election not less than two hundred and ten (210) days and not more than one year prior to the end of the original term, setting forth its opinion as to the Fair Market Rental (as hereinafter defined) for the Equipment during the renewal term. If, after forty (40) days from the giving of notice by Lessee of Lessee's election to extend the term of this Lease, Lessor and Lessee have failed to agree upon the Fair Market Rental of the Units, such rental shall be determined in accordance with the following procedure: The parties hereto shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within sixty (60) days after the aforesaid notice is given, each party shall appoint an independent appraiser within sixty-five (65) days after such notice is given, and the two appraisers so appointed shall appoint a third independent appraiser within seventy-five (75) days after such notice is given. If no such third appraiser is appointed within seventy-five (75) business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed renewal term within thirty (30) days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determina-

tion of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commerical Arbitration Rules of the American Arbitration Association as then in effect, except that Fair Market Rental shall be determined on the basis of, and shall be equal in an amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to invoke any judicial or other procedure for such purpose. The expenses of the appraisal procedure shall be borne equally by the Lessee and the Lessor. All of the provisions of the Lease shall be applicable during any such renewal term except for the amount of each installment of rent which shall be as hereinabove provided. The "term" of this Lease shall, except where the context otherwise requires, be deemed to include any renewal terms.

13.2 Right of First Refusal. In the event that during the one-year period following the expiration of the original or any extended term of this Lease, Lessor shall receive a bona fide offer from a party unrelated to Lessor or Lessee to purchase the Units and Lessor shall elect to sell the Units pursuant to such offer, provided no Event of Default or event which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing, Lessor shall give Lessee prompt written notice of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party to Lessor. Lessee shall then, for the fifteen (15) days following its receipt of such notice, have the sole right and option to purchase the Units at the price and under the terms and conditions of payment offered by the other party, provided that Lessee shall bear the cost of transporting the Units to the place of their delivery to Lessee, to the extent, if any, that such cost exceeds that which would have been borne by Lessor if Lessor had sold the Units to the other party. Lessee, if it so elects, shall exercise such purchase right by delivering to Lessor a written notice within fifteen (15) days of receipt of notice of the proposed sale specifying a date of purchase, which date shall not be later than twenty (20) days after the date of delivery of such notice.

13.3 Termination Option.

(i) Provided no Event of Default or event which, with notice or lapse of time or both, would constitute an Event

of Default shall have occurred and be continuing, and provided that Lessee shall have secured at least one bid of a type hereinafter described, Lessee may, at its option, on ~~January~~ ^{February} 1, 1986 or any rent payment date thereafter (the "Termination Date"), on at least 120 days' prior written notice to Lessor and subject to the conditions herein set forth, terminate this Lease with respect to all, but not less than all, of the Units then subject hereto, provided Lessee shall have made a good faith determination that the Units are obsolete or surplus to Lessee's requirements, and Lessee shall have delivered to Lessor, together with the aforementioned notice, a certificate signed by an officer of Lessee setting forth the basis for such determination. During the period from Lessee's giving of notice until the Termination Date, Lessee, as agent for Lessor, shall use its best efforts to obtain bids for the purchase of the Units by a person other than Lessee or an affiliate thereof. Lessee shall promptly certify in writing to Lessor the amount and terms of each bid received by Lessee, together with the name and address of each person, firm or corporation submitting the same. Subject to Lessor's right to retain the Units as provided in §13.3(ii), on the Termination Date, Lessor shall transfer title to the Units to a purchaser solicited by Lessee without recourse or warranty of condition, except that Lessor shall warrant title, and ~~Lessee~~ ^{Lessor} shall sell the Units for cash to the bidder who has submitted the highest bid prior to such date. The total sale price realized at such sale shall be retained by Lessor and, in addition, on the Termination Date, Lessee shall pay to Lessor the amount, if any, by which the appropriate Termination Value of the Units as set forth in Schedule 3 of this Lease, computed as of the Termination Date, exceeds the proceeds of such sale (after deducting all reasonable expenses incurred by Lessor in selling the Units), whereupon this Lease shall terminate, except as herein otherwise expressly provided. Subject to the provisions of §13.3(iii), in the event no bids are received by Lessee, Lessee shall pay to Lessor together with the rent due, the Termination Value of the Units, computed as of the Termination Date, and deliver the Units to Lessor in accordance with and subject to the provisions of §14 hereof, whereupon this Lease shall terminate, except as herein otherwise expressly provided.

(ii) Notwithstanding the provisions of §13.3(i), Lessor shall have the right at any time up to and including the proposed sale date, within its sole discretion, to elect not to sell the Units to any prospective purchaser secured by Lessee ("Third Party Purchaser"). In the event Lessor elects not to sell the Units to the Third Party Purchaser, Lessee shall return the Units to Lessor in the condition and manner required by §14 hereof, and Lessor thereupon may retain such Units for its own account without further obligation under this Lease. If no sale shall have occurred on or as of the Termination Date because the Third Party Purchaser fails to consummate a proposed sale and Lessor shall not have requested the return of the Units pursuant hereto, the Lease shall continue in full force and effect. In the event of any such sale or the return

of the Units to Lessor pursuant hereto and provided Lessee is not in default with respect to any obligation under this Lease, the obligation of Lessee to pay rent with respect to the Units for the period subsequent to the Termination Date shall cease.

(iii) If the Termination Value exceeds the highest bid or in the event no bids are received by Lessee, Lessee may, at its option, upon written notice given to Lessor not less than 15 days prior to the Termination Date, elect to rescind and cancel Lessee's notice of termination, whereupon this Lease shall not terminate pursuant to this §13.3, but this Lease shall continue in full force and effect as though no notice of termination had been given by Lessee; provided, however, if Lessor elects to retain the Unit for its own account in accordance with the provisions of §13.3(ii) and notifies Lessee of such election within 5 days after receipt by it of such notice of recision from Lessee, then such election of recision by Lessee shall be void and of no effect and Lessee shall return the Units to Lessor in accordance with the provisions of §13.3(ii).

§14. RETURN OF EQUIPMENT UPON EXPIRATION OF LEASE TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease or the termination of the original term of this Lease pursuant to §13 hereof, Lessee shall, at the request of Lessor, assemble and deliver possession of the Equipment to Lessor upon such storage tracks of Lessee as Lessee may reasonably designate, or on such other tracks as Lessee and Lessor may designate by mutual agreement, and permit Lessor to store such Equipment on such tracks for a period not exceeding one month. Lessee shall, at its own expense, transport the same, at any time within such one-month period, to the nearest railroad interconnection, all as directed by Lessor. During any such storage period Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of each such Unit, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of willful acts or negligence of Lessee or its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to Lessor pursuant to this §14 shall: (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted; and (ii) except for additions, modifications and improvements which Lessee or any sublessee is entitled to remove under the provisions of §7.3 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction, as well as all standards then in effect under the interchange rules of the Association of American Railroads or such comparable standards as may then be in effect. The assembling, storage and transporting of the Equipment as

hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, store and transport the Equipment. All amounts earned in respect of the Equipment after the date of termination of this Lease shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. If any Unit is not assembled, stored and transported, as hereinabove provided, within 60 days after such termination, Lessee shall, in addition, pay to Lessor for each day thereafter an amount equal to the amount, if any, by which the product of: (A) a fraction the numerator of which is the Penalty Rate and the denominator of which is 360; and (B) the Casualty Value of such Unit (as of the date 60 days after such termination) for each such day exceeds the actual earnings received by Lessor on such Unit for each such day.

§15. SUBLEASE, ASSIGNMENT,
MERGER, ETC. BY LESSEE.

15.1 No Assignment without Consent. Lessee shall not, without the prior written consent of Lessor, assign, sublet or transfer its leasehold interest under this Lease in any of the Units, except, in the ordinary course of Lessee's business, which is to lease equipment such as the Equipment to railroads and other users. Lessee shall not, without the prior written consent of Lessor, except as provided in this §15.1, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units. Lessee hereby assigns to Lessor, effective upon the occurrence of any Event of Default, to the extent necessary to satisfy Lessee's obligations to Lessor under §11 hereof, all of Lessee's right, title and interest in and to the rentals then and thereafter payable to Lessee under and pursuant to the provisions of all subleases then in effect pursuant to which third parties lease one or more of the Units from Lessee.

No assignment, sublease or transfer entered into by Lessee hereunder shall relieve Lessee of any liability or obligations hereunder, which shall be and remain those of a principal and not a surety.

15.2 Interchange, etc. So long as no Event of Default or event, which with notice of lapse of time or both, would constitute an Event of Default, shall have occurred and be continuing, Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of Lessee or any affiliate thereof or over which Lessee has trackage or other operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract, and also to permit the use of the Equipment upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease. Lessee may receive

and retain compensation for such use from other railroads using any of the Equipment. Lessee shall not use or permit the use of any Unit outside of the United States of America, except for occasional use in Canada.

15.3 Merger, Consolidation, etc. Nothing in this Section 15 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of Lessee) into or with which Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

§16. ASSIGNMENT BY LESSOR

Lessor and any direct or remote assignee of any right, title or interest of Lessor hereunder may, without obtaining Lessee's consent, at any time or from time to time assign all or part of its right, title and interest in and to this Lease to any person, firm or corporation having a net worth of at least \$30,000,000, determined in accordance with generally accepted accounting principles. Without limiting the foregoing, Lessor and any such assignee may, without obtaining Lessee's consent, have the right at any time or from time to time transfer, subject to Lessee's rights under this Lease, all or part of its right, title or interest in any Unit, to any person, firm or corporation having a net worth of \$30,000,000, determined in accordance with generally accepted accounting principles.

Lessor may obtain financing through a financial institution and secure such financial institution ("Secured Party") by granting a security interest or other lien on any or all of the Equipment, this Lease and sums due hereunder. In such event: (i) the security agreement or lien instrument will specifically provide that it is subject to Lessee's rights as herein provided; (ii) such assignment of this Lease will not relieve Lessor from its obligations hereunder or be construed to be an assumption by Secured Party of such obligations (but Secured Party may perform, at its option, some or all of Lessor's obligations); (iii) upon written request by Secured Party, Lessee will make all payments of rental and other amounts due hereunder directly to Secured Party; (iv) Lessee's obligations hereunder, including (without limitation) its obligation to pay rent and other amounts due hereunder, shall not be subject to any reduction, abatement, defense, setoff, counterclaim or recoupment for any reason whatsoever, which, however, shall not prevent Lessee from asserting any claim separately against Lessor; and (v) Lessee will not, after obtaining knowledge of any such assignment, consent to any modification of this Lease without the consent of Secured Party.

§17. RECORDING

Lessee, at its own expense, will cause this Lease to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interest in the Equipment or for the purpose of carrying out the intention of this Lease and Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this §17, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor. This Lease shall be filed with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§18. INCOME TAX INDEMNIFICATION

18.1 Tax Assumptions. It is the intent of the parties to this Lease that it will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to Lessee any right, title or interest in the Equipment except as lessee. In accordance with that intent, this Lease has been entered into on the assumptions (the "Tax Assumptions") that for United States federal income tax purposes (and to the extent applicable for state, city and local tax purposes):

(i) Lessor, as the owner of the Equipment will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of property, including, without limitation: (A) the depreciation deduction with respect to the Units authorized under Section 167 of the Code (the "ADR Deduction"); (1) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, 1977-1 CB548 for property in Asset Guideline Class No. 00.25, as in effect at the time Lessor becomes owner of each Unit, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof; (2) employing initially the 200% declining balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to Lessor, as permitted by the Code and regulations at the time the Lessor becomes the owner of each Unit; (3) including in the basis of each Unit (the "Basis") the entire purchase price thereof and all other items properly includable under Section 1012 of the Code;

(4) depreciating to a net salvage value of zero after taking into account the reduction of salvage value permitted by Section 167(f) of the Code; and (5) utilizing the half-year convention as provided in Regulation Section 1.167(a)-11-(c) (2)(iii); and (B) the investment credit equal to 10% of the Basis of each Unit (the "Investment Credit"), pursuant to Section 38 and related sections of the Code; and

(ii) each Unit will have a fair market value at the end of the original term of this Lease (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such original lease term and determined after subtracting from such value the cost, if any, for removal and redelivery of possession to Lessor at the end of such term) equal to at least 20% of Lessor's Cost of such Unit, and each Unit is estimated to have a remaining useful life at the end of the original term of this Lease equal to at least three years.

18.2 Representations and Warranties.

(i) Lessee represents and warrants that: (A) at the time Lessor becomes the owner of each Unit, such Unit will: (1) constitute property the entire Basis of which qualifies for the Investment Credit and (2) constitute "new Section 38 property", within the meaning of Sections 46 and 48 of the Code, and not have been used by any person so as to preclude "the original use of such property", within the meaning of Sections 48(b) and 167(c) (2) of the Code, from commencing with Lessor; (B) at the time Lessor becomes the owner of each Unit, Lessor will be entitled to, and such Unit will qualify for, the ADR Deduction using the Tax Assumptions as to useful life and methods as set forth in A(1) and A(2) of §18.1 hereof; (C) Lessee will not at any time during the term of this Lease use or fail to use or permit the use of any Unit in such a way as to disqualify it as "Section 38 property", within the meaning of Section 48(a) of the Code, or as property eligible for the ADR Deduction; and (D) Lessee will maintain sufficient records to verify such use, which records will be furnished to Lessor within 30 days after receipt of a written demand therefor;

(ii) Lessee further warrants and agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action (other than any action required by the terms of this Lease) or file any tax returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by Lessor over the amount specified to be payable under this Lease on the

dates due hereunder except as specifically provided in this Lease, and that each of such corporations will file such returns, take such action, and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying upon demand by Lessor such records as will enable Lessor to determine the extent to which it is entitled to the full benefit of the ADR Deduction and the Investment Credit with respect to the Equipment.

18.3 Indemnities.

(i) If (except as a result of the occurrence of any Excluded Event set forth below) Lessor shall suffer a disallowance of or shall be required to recapture or shall not have or shall lose the right to claim (any such event being hereinafter called a "Loss"), all or any portion of the ADR Deduction or the Investment Credit (a "Benefit") with respect to all or part of any Unit due to:

(A) any act or omission of Lessee, except such as are permitted by the terms of this Lease;

(B) the breach of, or misrepresentation with respect to, any provision of §18.2 hereof by Lessee; or

(C) the inaccuracy of any statement contained in any letter or document furnished to Lessor by Lessee pursuant to the terms of this Lease;

then in any such case, subject to the provisions of §18.3 (iv) hereof dealing with contesting a disallowance or recapture of a Tax Benefit, the rental rate applicable to such Unit set forth in §4 of this Lease that shall, on and after the next succeeding rental date after payment of the tax attributable to any Loss of Benefit under the provisions of this paragraph, be increased by such amount for such Unit as, will preserve for Lessor the effective after-tax return and after-tax cash flow (collectively the "Net Return"), as set forth in a GATX Lease Funding, Inc. Lease Investment Analysis, dated September 30, 1980, that would ~~that would~~ have been realized by Lessor if such Loss had not occurred in respect of such Unit under this Lease. Lessee shall forthwith pay to Lessor the amount of any interest and penalty which may be assessed by the United States (or where applicable by any state or local taxing jurisdiction) against Lessor attributable to the Loss.

(ii) Notwithstanding the provisions of §18.3(i) hereof, there shall be no increase made in rentals nor shall any payment be required to be made by Lessee if Lessor shall have

suffered such Loss with respect to all or part of such Unit as a result of the occurrence of any of the following events ("Excluded Events"):

(A) a Casualty Occurrence with respect to such Unit, if Lessee shall have paid to Lessor the amounts stipulated under §8 hereof; or

(B) a voluntary transfer or disposition of any interest in such Unit by Lessor; any transfer or disposition of any interest in such Unit by Lessor resulting from bankruptcy or other proceedings for the relief of debtors, whether voluntary or involuntary, in which Lessor is the debtor, or the voluntary reduction by Lessor of its interest in the rentals from such Unit under this Lease (other than pursuant to the assignment of this Lease to a financial institution), unless, in each case, an Event of Default shall have occurred and be continuing; or

(C) the failure of Lessor to claim in a timely and proper manner (including all appropriate elections) in its Federal income tax return the ADR Deduction or the Investment Credit; or

(D) the failure of Lessor to have sufficient income to benefit from the ADR Deduction or sufficient liability for Federal income tax against which to credit the Investment Credit; or

(E) any other act of Lessor not specifically required or permitted hereby or contemplated herein; or

(F) any amendments to the Code, IRS Regulations and tax rules enacted or promulgated and effective after the date on which Lessor becomes the owner of each Unit; or

(G) any participation in the residual value of any Unit at the expiration of the original term of this Lease by any party other than Lessor.

(iii) Lessor shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or preceeding in respect of which Lessee would be required to make indemnification payments under the provisions of this §18. Lessor agrees that if, in the opinion of independent tax counsel selected by Lessor and approved by Lessee ("Counsel"), such approval not to be unreasonably withheld by Lessee, a reasonable basis to contest the disallowance or recapture of all or a portion of the Benefits with respect to any Unit exists in

respect of which Lessee would be required to make indemnification payments under the provisions of this §18 to Lessor pursuant hereto, Lessor shall, upon the written request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to contest such claim, and if Lessor fails to contest, Lessee will not be required to indemnify Lessor for the Loss of tax Benefits as set forth in §18.3(i) hereof; provided, however, that Lessor shall not be obligated to take any such legal or other appropriate action unless Lessee shall first have indemnified Lessor for all expenses which may be entailed therein. If within 30 days after notice from Lessor Lessee does not request that Lessor contest the disallowance or recapture of the Benefits or if, in the opinion of Counsel, no reasonable basis to contest such matter exists, then Lessee will have no further right of contest;

(iv) In the event Lessee requests that Lessor contest the disallowance or recapture of the Benefits and, in the opinion of Counsel, a reasonable basis to contest such matter exists, then Lessor shall either take such action to contest the disallowance or recapture prior to making any payment of tax and interest and/or penalty attributable to the disallowance or recapture with respect to Lessor of all or any portion of the Benefits with respect to any Unit or shall make such payment (for purposes of this §18.3, the "Tax Payment") and thereafter seek a refund. If Lessor contests prior to making the Tax Payment, the indemnification payable hereunder need not be paid by Lessee while such action is pending. In such case, if the Final Determination (as hereinafter defined) shall be adverse to Lessor, the indemnification payable hereunder shall be computed by Lessor as of the date of such Final Determination and Lessee shall commence payment of indemnities on the date and in the manner and to the extent provided in §18.3(i) hereof, and on or before such payment date, Lessee shall pay to Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by Lessor in respect of such Final Determination. If, preliminary to a suit for refund, Lessor makes the Tax Payment, Lessee shall immediately reimburse Lessor in full therefor but no adjustment shall be made to the rentals due hereunder while such action is pending. In such case, if the Final Determination shall be adverse to Lessor, the indemnification payable hereunder shall be computed by Lessor as of the date of such Final Determination and Lessee shall commence payment of indemnities on the date and in the manner and to the extent provided in §18.3(i) hereof, taking into account all payments previously made by Lessee pursuant to this paragraph. If such Final Determination shall be in favor of Lessor, Lessor shall forthwith upon receipt of refund of amounts previously paid, pay to Lessee an amount consisting of such refund and any interest received thereon.

Lessee agrees to pay to Lessor on demand any reasonable expense incurred by Lessor in connection with such contest. For purposes of this §18 "Final Determination" is defined as a final decision or opinion of a court of competent jurisdiction which, in the opinion of Counsel and after taking into consideration the liabilities created thereby, presents no reasonable basis on which to appeal;

(v) Lessee's and Lessor's agreements and obligations to pay any sums which may become payable pursuant to this §18 shall survive the expiration or other termination of this Lease. For purposes of this §18, the term "Lessor" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes;

(vi) In the event the rental rates shall be increased as hereinbefore provided, the Casualty Values set forth in §8 hereof shall be adjusted accordingly;

(vii) If any amendment to the Code, IRS Regulations or tax rules is enacted or promulgated and made effective with respect to any Unit prior to the time Lessor becomes the owner of such Unit, and such amendment causes a change in the Benefits, then the rental rate specified in §4 of this Lease (and the Casualty Value percentages set forth in Schedule 2 hereto) shall be increased or decreased as necessary so as to preserve Lessor's Net Return at the same level as if the Benefits had not been changed.

(viii) Lessor shall furnish Lessee with a statement from the head of its tax department indicating the total amount for which it is entitled to be indemnified hereunder, and further indicating that such amount is to the best of his knowledge and belief properly calculated.

18.4 Alterations, Modifications and Improvements.

(i) In the event and to the extent that Lessor is required to include in its gross income for Federal income tax purposes the value of any addition, modification or improvement to any Unit made by Lessee, under and pursuant to the terms of this Lease or otherwise (all such additions, modifications or improvements described in this sentence being hereinafter called "Alterations"), Lessee shall pay to Lessor on each of the dates provided in this Lease for payment of installments of rent, commencing with the first such date following the date on which Lessee gives Lessor written notice of such inclusion, such additional rentals which, after deduction of all taxes required to be paid by Lessor on the receipt thereof under the laws of the United States of America or any political subdivision thereof and after taking into account any present or future tax benefits that Lessor reasonably anticipates it will derive from its additional investment in the

Equipment (including, without limitation, any available current deduction, current and future depreciation deductions and investment tax credit), when taken together with the amount of any rental installments due on such dates under this Lease (but with appropriate adjustment on any such date for any such rental installment which for any reason shall not in fact be paid by Lessee), will, in the reasonable opinion of Lessor, cause Lessor's Net Return to equal the Net Return that would have been realized by Lessor if the value of any such Alterations had not been includible in Lessor's gross income. The Casualty Values payable with respect to the Equipment shall be adjusted in amounts calculated in a similar such manner by Lessor.

(ii) In the event that Lessor concludes that it is required to include in its gross income for Federal income tax purposes the value of any Alterations, Lessor shall promptly, upon its reaching such conclusion, give written notice thereof to Lessee. Lessor agrees that if, in the opinion of Counsel, a reasonable basis to contest such inclusion exists, Lessor shall, upon the written request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to contest such inclusion, and if Lessor fails to contest the same, Lessee will not be required to make any payment set forth in this §18.4. If within 30 days after notice from Lessor Lessee does not request that Lessor contest any such inclusion or if, in the opinion of Counsel, no reasonable basis to contest any such inclusion exists, then Lessee will have no further right of contest.

(iii) In the event Lessor requests that Lessor contest any such inclusion and, in the opinion of Counsel, a reasonable basis to contest such inclusion exists, then Lessor shall either take such action to contest the inclusion prior to making any payment of tax and interest and/or penalty attributable to such inclusion or shall make such payment (for purposes of this §18.4, the "Tax Payment") and thereafter seek a refund. If Lessor contests prior to making the Tax Payment, the indemnification payable hereunder need not be paid by Lessee while such action is pending. In such case, if the Final Determination shall be adverse to Lessor, the indemnification payable hereunder shall be computed as of the date of such Final Determination and Lessee shall commence payment of the indemnities on the date and in the manner and to the extent provided in §18.4(i) hereof, and on or before such payment date, Lessee shall pay to Lessor as an additional payment hereunder an amount equal to all interest and penalty paid by Lessor in respect of such Final Determination. If, preliminary to a suit for refund, Lessor makes the Tax Payment, Lessee shall immediately reimburse Lessor in full therefor but no adjustment shall be made to the rentals hereunder while such action is pending. In such case, if the Final Determination shall be adverse to Lessor, the indemnification payable hereunder

shall be computed by Lessor as of the date of the Final Determination and Lessee shall commence payment of the indemnities on the date and in the manner and to the extent provided in §18.4(i) hereof, taking into account all payments previously made by Lessee pursuant to this paragraph. If the Final Determination shall be in favor of Lessor, Lessor shall forthwith upon refund of amounts previously paid, pay to Lessee an amount consisting of such refund and any interest received thereon.

Lessee agrees to pay to Lessor on demand any reasonable expense incurred by Lessor in connection with such contest.

**§19. LESSEE'S ADDITIONAL WARRANTIES
AND REPRESENTATIONS**

Lessee represents and warrants that:

(i) Lessee is a corporation duly organized and existing in good standing under the laws of the State of New Jersey and is duly qualified and authorized to do business and is in good standing in every other jurisdiction where the nature of Lessee's business or of its activities require such qualification;

(ii) Lessee is duly authorized to execute and deliver this Lease and the Purchase Order Assignment, and is and will continue to be duly authorized to lease the Equipment and to perform its obligations hereunder and thereunder;

(iii) The execution and delivery of the Purchase Order Assignment and this Lease by Lessee, and the performance by Lessee of its obligations hereunder and thereunder, do not and will not conflict with any provision of law or of the charter or by-laws of Lessee or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Lessee or to which Lessee is a party;

(iv) The execution, delivery and performance of the Purchase Agreement Assignment and this Lease by Lessee, and the consummation by Lessee of the transactions contemplated hereby and thereby do not and will not require the consent, approval or authorization of, or notice to, any Federal or state governmental authority or public regulatory body, except as required by §17 hereof.

(v) The Purchase Agreement Assignment and this Lease are legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms;

(vi) There are no actions or proceedings pending or, to Lessee's knowledge, threatened before any court or administrative agency which might, to a material extent, adversely affect the financial condition or operations of Lessee (except as previously disclosed in writing by Lessee to Lessor);

(vii) Upon the purchase by the Lessor of the Equipment pursuant to the Purchase Agreement Assignment, no mortgage, deed of trust, indenture, lease or other lien or security interest of any nature whatsoever which now covers or affects any property or interest will attach or thereafter will attach to the Equipment or in any manner affect or will affect adversely Lessor's right, title and interest therein, provided, that this representation and warranty shall not be considered breached by any lien attaching to the leasehold interest of Lessee under this Lease by reason of any existing or future mortgage to which Lessee is a party covering substantially all of Lessee's railroad property; and

(viii) Other than with respect to defaults which would not have a material adverse effect on Lessee's ability to perform its obligations under this Lease, Lessee is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any long term rental obligation under which Lessee is the lessee, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder.

§20. CONDITIONS TO LESSOR'S OBLIGATIONS.

The obligations of Lessor to purchase the Equipment under the Purchase Agreement Assignment and lease it to Lessee hereunder shall be subject to the following conditions:

(i) Lessee shall give Lessor not less than three business days prior notice of the date on which each Unit is scheduled to be delivered and accepted by Lessee pursuant to §3 hereof.

(ii) On or before the first delivery of Equipment, the consent of the vendor provided for in the Purchase Agreement Assignment shall have been duly executed and delivered by the vendor thereof.

(iii) On or before the first delivery of Equipment, Lessee will have caused this Lease to be recorded as provided for in §17 hereof.

(iv) On or before the first delivery of Equipment, the Guaranty shall have been duly executed by Guarantor, and Lessor shall have duly received the same.

(v) On the date which the first Unit is scheduled to be delivered and accepted by the Lessee hereunder (hereinafter called the "First Delivery Date"):

(a) Lessor shall have received a certificate dated such date signed by an officer of Lessee to the effect that the representations and warranties of Lessee contained in this Lease and in the Purchase Agreement Assignment are true in all material respects on the First Delivery Date with the same effect as though made on and as of said date and that Lessee has performed and complied with all agreements and conditions contained in this Lease and the Purchase Agreement Assignment which are required to be performed or complied with by the Lessee on or before said date.

(b) Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor:

(1) Resolutions of the Board of Directors of Lessee, certified by its Secretary or an Assistant Secretary, authorizing the lease of the Equipment hereunder, the execution, delivery and performance by Lessee of the Purchase Agreement Assignment and this Lease, and the execution and delivery of the Certificates of Acceptance required hereunder, designating the title of the officers of Lessee authorized to execute and deliver the Certificates of Acceptance;

(2) An opinion of counsel for Lessee, in form and substance satisfactory to Lessor, dated as of the First Delivery Date to the same effect as the representations and warranties set forth in paragraphs (i) through (vi), inclusive, of §19 hereof;

(3) An opinion of counsel for Lessee, dated as of the First Delivery Date, to the effect that this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303, and such filing and recording will protect Lessor's interest in and to the Units, and no further filing or recording (or giving of notice) with any other federal, state or local government agency is necessary to protect the interest of Lessor in and to the Equipment;

(4) A certificate dated such date signed by an officer of Lessee to the effect that each Unit has an estimated useful life extending at least three (3) years beyond the expiration of the term hereof (excluding any renewal term) and will have an estimated fair market value of at least twenty percent (20%) of Lessor's Cost at expiration of the term hereof (excluding any renewal term), without including in such fair market value any increase or decrease for inflation or deflation during such term; and

(5) Certificates of insurance evidencing the existence of the insurance required by §8.6 hereof.

(vi) On or before each delivery of Equipment, Lessee shall have furnished to Lessor, in form and substance satisfactory to Lessor:

(a) An invoice of the vendor of the Unit or Units to be accepted on such date setting forth the purchase price of such Unit or Units.

(b) A Certificate of Acceptance covering the Unit or Units to be accepted on such date executed by the duly authorized officer of Lessee, confirming (i) the delivery to, and acceptance by, Lessee under this Lease of such Unit or Units and (ii) the correctness of the purchase price thereof;

(c) A bill of sale from the vendor of the Unit or Units to be accepted on such date in the form of Exhibit E attached to the Purchase Agreement Assignment;

(d) An opinion of Lessee's or the vendor's counsel, satisfactory to Lessor, that acceptance by Lessor of the Unit or Units to be accepted on such date and payment therefor by Lessor shall be effective to transfer to Lessor good title to such Unit or Units, free of all claims, liens or encumbrances of any nature; and

(e) Such other releases, financing statements, waivers and other documents as Lessor may reasonably request to insure that the Equipment will not be subject to any lien, charge, encumbrance, security interest or other similar interest.

§21. REPORTS

Lessee shall deliver to Lessor: (i) as soon as available and in any event within ninety (90) days after the end of each fiscal year of Lessee, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of Lessee stating that a review of activities of Lessee during such year has been made under his supervision with a view to determining whether Lessee has kept, observed, performed and fulfilled all its obligations under this Lease and that, to the best of his knowledge, during such year Lessee has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained therein, or if an Event of Default shall exist or if any event has occurred and is continuing which, with notice or lapse of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof; (ii) as soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of Lessee, copies of the consolidated balance

sheet of Lessee as of the end of such quarterly accounting period and copies of the related consolidated statements of income, retained income and changes in financial position of Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by the chief financial officer of Lessee, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; (iii) as soon as available, and in any event within ninety (90) days after the end of each in comparative form with the preceding fiscal year, of the consolidated balance sheet of Lessee as at the end of such fiscal year, and of the related consolidated statements of income, retained income and changes in financial position of Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by Lessee's independent public accountants; and (iv) as soon as available, a copy of (A) each Form C-1 and each report relating to the Equipment, if any, required to be submitted to the Interstate Commerce Commission (or any successor thereto) by Lessee, and each report on Form 10-K, Form 10-Q and Form 8-K, if any, required to be submitted and each registration statement filed with the Securities and Exchange Commission (or any successor thereto) by Lessee and (B) all statements and reports that Lessee sends or makes generally available to any of its security holders. All financial statements delivered pursuant to this §21 shall be prepared in accordance with generally accepted accounting principles consistently applied.

§22. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered, telexed or mailed, first class, postage prepaid, addressed as follows:

- (a) if to Lessor: Wickes Leasing Corporation
1010 Second Avenue
San Diego, California 92101
Attention: President
- (b) if to Lessee: Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632
Attention: President
- ...with a copy to: Rex-Noreco, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632
Attention: Mr. Mark A. Salitan

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§23. MISCELLANEOUS

23.1 Severability. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

23.2 Effect and Modification of Lease. This Lease exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Equipment and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee.

23.3 Third Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

23.4 Lessor's Right to Perform for Lessee. If Lessee fails to perform or comply with any of its agreements contained herein, Lessor may, upon notice to Lessee, itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of Lessor incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate shall be payable by Lessee upon demand. No such performance or compliance by Lessor shall be deemed a waiver of the rights and remedies of Lessor against Lessee hereunder or be deemed to cure a default by Lessee hereunder.

§24. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§25. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

REX RAILWAYS, INC.

[Corporate Seal]

By: Donald A. Hutton

Title: Gen. Mgr.

Attest:

Doris Carlson
Asst. Secretary

WICKES LEASING CORPORATION

[Corporate Seal]

By: John F. Reese

Title: President

Attest:

N. T. Long
Asst. Secretary

COUNTY OF Bergen

Maria Jane Turillo
Notary Public
MARI

MARION JANE TURIELLO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 2, 1983

On this 8th day of DECEMBER, 1980, before me personally appeared J. F. Rice, to me personally known, who, being by me duly sworn save that he is the PRESIDENT of WICKES LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ruth Walton
Notary Public

OFFICIAL SEAL
RUTH HALTON
 NOTARY PUBLIC - CALIFORNIA
 PRINCIPAL OFFICE IN
 SAN DIEGO COUNTY
 My Commission Expires March 4, 1983

SCHEDULE 1 TO LEASE

<u>Type</u>	<u>Quantity</u>	<u>Lessor's Cost</u>	<u>Road Numbers</u>	<u>Estimated Delivery</u>
100-ton steel covered hopper cars conforming to Manufacturer's General Arrangement Drawing No. 9-11460, dated September 11, 1980, and Specification No. 403, dated September, 1980.	37	\$47,400 each	MILW102128 to MILW102164, inclusive	December 10, 1980

SCHEDULE 2 TO LEASE

CASUALTY VALUES

FCOM Brent
LundbeCasualty Payment DatesPercentage of Lessor's
Cost

2/1/1981	104.436
3/1/1981	104.670
4/1/1981	104.899
5/1/1981	105.121
6/1/1981	105.334
7/1/1981	105.542
8/1/1981	105.739
9/1/1981	105.932
10/1/1981	106.119
11/1/1981	106.296
12/1/1981	106.467
1/1/1982	106.633
2/1/1982	106.787
3/1/1982	106.937
4/1/1982	107.080
5/1/1982	107.218
6/1/1982	107.349
7/1/1982	107.488
8/1/1982	107.652
9/1/1982	107.810
10/1/1982	107.961
11/1/1982	108.103
12/1/1982	108.239
1/1/1983	108.368
2/1/1983	108.489
3/1/1983	108.603
4/1/1983	108.710
5/1/1983	108.810
6/1/1983	108.944
7/1/1983	108.990
8/1/1983	109.070
9/1/1983	109.143
10/1/1983	109.208
11/1/1983	109.267
12/1/1983	109.319
1/1/1984	109.363*
2/1/1984	102.676
3/1/1984	103.122
4/1/1984	103.142
5/1/1984	103.154
6/1/1984	103.160
7/1/1984	103.158
8/1/1984	103.151

SCHEDULE 2 (CONT'D)

Casualty Payment Dates

Percentage of Lessor's Cost

9/1/1984	103.135
10/1/1984	103.111
11/1/1984	103.081
12/1/1984	103.043
1/1/1985	102.995
2/1/1985	102.943
3/1/1985	102.881
4/1/1985	102.811
5/1/1985	102.733
6/1/1985	102.650
7/1/1985	102.558
8/1/1985	102.463
9/1/1985	102.359
10/1/1985	102.246
11/1/1985	102.126
12/1/1985	102.001
1/1/1986	101.888**
2/1/1986	95.002
3/1/1986	94.622
4/1/1986	94.229
5/1/1986	93.823
6/1/1986	93.417
7/1/1986	92.998
8/1/1986	92.578
9/1/1986	92.146
10/1/1986	91.700
11/1/1986	91.254
12/1/1986	90.795
1/1/1987	90.323
2/1/1987	89.849
3/1/1987	89.362
4/1/1987	88.862
5/1/1987	88.348
6/1/1987	87.835
7/1/1987	87.309
8/1/1987	86.784
9/1/1987	86.245
10/1/1987	85.692
11/1/1987	85.140
12/1/1987	84.574
1/1/1988	83.994***
2/1/1988	76.691
3/1/1988	76.097
4/1/1988	75.490
5/1/1988	74.869
6/1/1988	74.250
7/1/1988	73.616

SCHEDULE 2 (CONT'D)

Casualty Payment Dates

Percentage of Lessor's
Cost

8/1/1988	72.985
9/1/1988	72.340
10/1/1988	71.680
11/1/1988	71.022
12/1/1988	70.350
1/1/1989	69.664
2/1/1989	68.979
3/1/1989	68.279
4/1/1989	67.565
5/1/1989	66.836
6/1/1989	66.110
7/1/1989	65.370
8/1/1989	64.633
9/1/1989	63.882
10/1/1989	63.115
11/1/1989	62.352
12/1/1989	61.573
1/1/1990	60.779
2/1/1990	59.990
3/1/1990	59.184
4/1/1990	58.363
5/1/1990	57.526
6/1/1990	56.695
7/1/1990	55.848
8/1/1990	55.006
9/1/1990	54.148
10/1/1990	53.275
11/1/1990	52.407
12/1/1990	51.523
1/1/1991	50.622
2/1/1991	49.727
3/1/1991	48.815
4/1/1991	47.888
5/1/1991	46.943
6/1/1991	46.006
7/1/1991	45.053
8/1/1991	44.106
9/1/1991	43.142
10/1/1991	42.163
11/1/1991	41.190
12/1/1991	40.200
1/1/1992	39.193
2/1/1992	38.193
3/1/1992	37.175
4/1/1992	36.142
5/1/1992	35.090
6/1/1992	34.047

SCHEDULE 2 (CONT'D)

Casualty Payment Dates

Percentage of Lessor's Cost

7/1/1992	32.987
8/1/1992	31.936
9/1/1992	30.867
10/1/1992	29.781
11/1/1992	28.703
12/1/1992	27.608
1/1/1993	26.495
2/1/1993	25.000

- * To be reduced by 6.724 if casualty occurs after the third anniversary of Unit's acceptance under the Lease.
 - ** To be reduced by 6.724 if casualty occurs after the fifth anniversary of Unit's acceptance under the Lease.
 - *** To be reduced by 6.724 if casualty occurs after the seventh anniversary of Unit's acceptance under the Lease.
-

SCHEDULE 3 TO LEASE

TERMINATION VALUES

<u>Termination Dates</u>	<u>Percentage of Lessor's Cost</u>
2/1/1986	95.002
3/1/1986	94.622
4/1/1986	94.229
5/1/1986	93.823
6/1/1986	93.417
7/1/1986	92.998
8/1/1986	92.578
9/1/1986	92.146
10/1/1986	91.700
11/1/1986	91.254
12/1/1986	90.795
1/1/1987	90.323
2/1/1987	89.849
3/1/1987	89.362
4/1/1987	88.862
5/1/1987	88.348
6/1/1987	87.835
7/1/1987	87.309
8/1/1987	86.784
9/1/1987	86.245
10/1/1987	85.692
11/1/1987	85.140
12/1/1987	84.574
1/1/1988	77.270
2/1/1988	76.691
3/1/1988	76.097
4/1/1988	75.490
5/1/1988	74.869
6/1/1988	74.250
7/1/1988	73.616
8/1/1988	72.985
9/1/1988	72.340
10/1/1988	71.680
11/1/1988	71.022
12/1/1988	70.350
1/1/1989	69.664
2/1/1989	68.979
3/1/1989	68.279
4/1/1989	67.565
5/1/1989	66.836
6/1/1989	66.110
7/1/1989	65.370
8/1/1989	64.633

on Dates

Percentage of Lessor's
Cost

989	9-1-87	63.882
989	10-1-87	63.115
989	11-1-87	62.352
989	12-1-87	61.573
990	1-1-90	60.779
990	2-1-90	59.990
990	3-1-90	59.184
990	4-1-90	58.363
990	5-1-90	57.526
990	6-1-90	56.695
990	7-1-90	55.848
990	8-1-90	55.006
990	9-1-90	54.148
990	10-1-90	53.275
990	11-1-90	52.407
990	12-1-90	51.523
1991	1-1-92	50.622
1991	2-1-92	49.727
1991	3-1-91	48.815
1991	4-1-91	47.888
1991	5-1-91	46.943
1991	6-1-91	46.006
1991	7-1-91	45.053
1991	8-1-91	44.106
1991	9-1-91	43.142
1991	10-1-91	42.163
1991	11-1-91	41.190
1991	12-1-91	40.200
1992	1-1-92	39.193
1992	2-1-92	38.193
1992	3-1-92	37.175
1992	4-1-92	36.142
1992	5-1-92	35.090
1992	6-1-92	34.047
1992	7-1-92	32.987
1992	8-1-92	31.936
1992	9-1-92	30.867
1992	10-1-92	29.781
1992	11-1-92	28.703
1992	12-1-92	27.608
1993	1-1-93	26.495
1993	2-1-93	25.000